

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>CHARLES WERKHEISER,</b>	:	
<b>Plaintiff</b>	:	<b>CIVIL ACTION NO. 3:16-186</b>
<b>v.</b>	:	<b>JUDGE MANNION</b>
<b>NANCY A. BERRYHILL<sup>1</sup>,</b>	:	
<b>Defendant</b>	:	

**ORDER**

Pending before the court is the report of Magistrate Judge William I. Arbuckle, which recommends that the decision of the Commissioner be vacated. (Doc. 17). No objections have been filed to the report. Upon review, the report will be adopted in its entirety.

When no objections are made to the report and recommendation of a magistrate judge, the court should, as a matter of good practice, “satisfy itself

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<sup>1</sup>On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. On March 6, 2018, the Government Accountability Office stated that, as of November 17, 2017, Ms. Berryhill’s status violated the Federal Vacancies Reform Act, which limits the time a position can be filled by an acting official and “[t]herefore Ms. Berryhill was not authorized to continue serving using the title of Acting Commissioner...” Violation of the Time Limit Imposed by the Federal Vacancies Reform Act of 1988 Commissioner, Social Security Administration. Government Accountability Office. March 6, 2018. However, Ms. Berryhill continues to functionally lead the Social Security Administration from her position of record as Deputy Commissioner of Operations. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted for Carolyn W. Colvin, Acting Commissioner of Social Security, as the defendant in this suit.

that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

On November 18, 2015, the plaintiff, in this case, was denied disability insurance benefits (“DIB”) and supplemental security income (“SSI”) by the administrative law judge (“ALJ”) (under Titles II and XVI of the Social Security Act.) The plaintiff appeals the decision, however, arguing that the denial of benefits is not supported by substantial evidence and is not based on a correct application of the law and regulations. In considering these claims, Judge Arbuckle determined that the ALJ’s evaluation of each criterion of 20 C.F.R. Part 404, Subpart P, Appendix 1, Listing 12.05 (c) (“Listing 12.05”) and the introductory criteria was inadequate. Judge Arbuckle concludes that a re-evaluation of Listing 12.05 could potentially affect the outcome of this case and, as such, finds that remand is appropriate. Accordingly, Judge Arbuckle recommends that the decision of the ALJ be vacated and this case be remanded.

The court has reviewed the entire report of Judge Arbuckle and agrees with the sound reasoning, which led Judge Arbuckle to his recommendation. As such, the court adopts the reasoning of Judge Arbuckle as the opinion of the court.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1)** The report and recommendation of Judge Arbuckle, **(Doc. 17)**, is **ADOPTED IN ITS ENTIRETY**.
- (2)** The plaintiff's complaint appealing the final decision of the Commissioner denying his claims for DIB and SSI benefits, **(Doc. 1)**, is **GRANTED**;
- (3)** The case is **REMANDED** to the Commissioner for further proceedings consistent with Judge Arbuckle's report; and
- (4)** The Clerk of Court is directed to **CLOSE THIS CASE**.

*s/ Malachy E. Mannion*  
**MALACHY E. MANNION**  
United States District Judge

**Date: September 7, 2018**